



06-11-09

PATENT

Attorney Docket No. 101.0058-03000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 5309
Gary K. Michelson)	
Serial No.: 10/802,906)	Group Art Unit: 3775
Filed: March 17, 2004)	Examiner: Richard R. Shaffer
For: ORTHOPEDIC IMPLANT WITH)	
LOCKING ELEMENT (as amended)))	

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL

Express Mail Mailing Label No. EH447103295US

Date of Deposit: June 9, 2009

I hereby certify that:

1. Information Disclosure Statement Under 37 C.F.R. § 1.97(c) (\$180.00 total amount to cover the IDS fee is to be charged to Deposit Account No. 50-3726)
2. Form PTO/SB/08
3. 68 documents
4. Self-addressed return postcard receipt

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Date: June 9, 2009


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INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicant brings to the attention of the Examiner the documents listed on the attached PTO/SB/08. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), the fee of \$180.00 as specified by Section 1.17(p) is to be charged to Deposit Account No. 50-3726.

Copies of the listed non-U.S. patent documents which have not previously been considered by the examiner are enclosed herewith. Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application is a continuation of Application No. 10/098,991, filed March 15, 2002, now U.S. Patent No. 7,077,844; which is a divisional of Application No. 09/669,912, filed September 26, 2000, now U.S. Patent No. 6,383,186; which is a divisional of U.S. Application No. 09/022,344, filed February 11, 1998, now U.S. Patent No. 6,139,550; upon which Applicant relies for the benefits provided in 35 U.S.C. § 120.

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Application No. 09/022,344 claims priority from provisional Application No. 60/037,139, filed February 11, 1997.

U.S. Patent Nos. 6,936,050; 6,398,783; 6,936,051, and 6,926,718 (all of which claim priority to provisional Application No. 60/037,139) were the subject of litigation in the U.S. District Court for the District of Massachusetts; Civil Action No. 3:06-cv-30165-MAP, hereinafter referred to as Litigation 1. In Litigation 1, the defendant asserted that various references were pertinent to the issue of validity of at least one of the '050, '783, '051, and '718 patents under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the defendant. References identified by the defendant in Litigation 1 as being allegedly pertinent to at least one of the '050, '783, '051, and '718 patents are identified by the designation "Lit. 1." An asterisk "*" identifies references that were submitted by Applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the defendant in Litigation 1 had alleged that these references were pertinent to at least one of the '050, '783, '051, and '718 patents. Litigation 1 has been settled.

U.S. Patent Nos. 6,916,320; 6,428,542; and 6,592,586 (all of which claim priority to provisional Application No. 60/037,139) were subjects of litigation in the U.S. District Court for the District of New Jersey; Civil Action No. 2:06-CV-0490 (SD06376), hereinafter referred to as Litigation 2. In Litigation 2, the defendant asserted that various references were pertinent to the issue of validity of at least one of the '320, '542, and '586 patents under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the defendant. References identified by the defendant in Litigation 2 as being allegedly pertinent to at least one of the '320, '542, and '586 patents are identified by the designation "Lit. 2." An asterisk "*" identifies references that were submitted by Applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the defendant in Litigation 2 had alleged that

these references were pertinent to at least one of the '320, '542, and '586 patents.

Litigation 2 has been settled.

U.S. Patent No. 6,916,320 was also the subject of litigation in the U.S. District Court for the Eastern District of Pennsylvania; Civil Action No. 2:06-cv-04248-JG, hereinafter referred to as Litigation 3. In Litigation 3, the defendant asserted that various references were pertinent to the issue of validity of the '320 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the defendant. References identified by the defendant in Litigation 3 as being allegedly pertinent to the '320 patent are identified by the designation "Lit. 3." An asterisk "*" identifies references that were submitted by Applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the defendant in Litigation 3 had alleged that these references were pertinent to the '320 patent. Litigation 3 was settled with the defendant acknowledging that the asserted claims of the '320 patent are valid and enforceable.

U.S. Patent Nos. 6,916,320; 6,428,542; 6,592,586; 6,936,050; 6,936,051; and 6,969,390 (all of which claim priority to provisional Application No. 60/037,139) are the subjects of litigation in the U.S. District Court for the District of Southern California; Civil Action No. 08 CV 1512 LAB AJB, hereinafter referred to as Litigation 4. In Litigation 4, the defendant has asserted that various references are pertinent to the issue of validity of at least one of the '320, '542, '586, '050, '051, and '390 patents under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the defendant. References identified by the defendant in Litigation 4 as being allegedly pertinent to at least one of the '320, '542, '586, '050, '051, and '390 patents are identified by the designation "Lit. 4." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the defendant in Litigation 4 has alleged that these references are pertinent to at least one of the '320, '542, '586, '050, '051, and '390 patents.

The Defendant from Litigation 4 has also requested inter partes reexamination of the '542 (Reexam Control No. 95/000,446, hereinafter referred to as Reexam 1), '586 (Reexam Control No. 95/000,447, hereinafter referred to as Reexam 2), '050 (Reexam Control No. 95/000,451, hereinafter referred to as Reexam 3), '320 (Reexam Control No. 95/000,450, hereinafter referred to as Reexam 4), '390 (Reexam Control No. 95/000,448, hereinafter referred to as Reexam 5), and '051 (Reexam Control No. 95/000,449, hereinafter referred to as Reexam 6) patents.

In Reexam 1, the requester has asserted that various references are pertinent to the issue of validity of the '542 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 1 as being allegedly pertinent to the '542 patent are identified by the designation "Rex. 1." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 1 has alleged that these references are pertinent to the '542 patent.

In Reexam 2, the requester has asserted that various references are pertinent to the issue of validity of the '586 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 2 as being allegedly pertinent to the '586 patent are identified by the designation "Rex. 2." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 2 has alleged that these references are pertinent to the '586 patent.

In Reexam 3, the requester has asserted that various references are pertinent to the issue of validity of the '050 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by

the requester in Reexam 3 as being allegedly pertinent to the '050 patent are identified by the designation "Rex. 3." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) or cited by the Examiner on a Form PTO-892 that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 3 has alleged that these references are pertinent to the '050 patent.

In Reexam 4, the requester has asserted that various references are pertinent to the issue of validity of the '320 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 4 as being allegedly pertinent to the '320 patent are identified by the designation "Rex. 4." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 4 has alleged that these references are pertinent to the '320 patent. The request for *inter partes* reexamination of the '320 patent was denied by the Patent and Trademark Office.

In Reexam 5, the requester has asserted that various references are pertinent to the issue of validity of the '390 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by the requester in Reexam 5 as being allegedly pertinent to the '390 patent are identified by the designation "Rex. 5." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 5 has alleged that these references are pertinent to the '390 patent.

In Reexam 6, the requester has asserted that various references are pertinent to the issue of validity of the '051 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO/SB/08 in the column for the Examiner's initials the references identified by the requester. References identified by

the requester in Reexam 6 as being allegedly pertinent to the '051 patent are identified by the designation "Rex. 6." An asterisk "*" identifies references that were submitted by the applicant with previously filed IDSs and considered by the Examiner (indicated by an initialed Form PTO/SB/08) or cited by the Examiner on a Form PTO-892 that are being submitted again to ensure that the Examiner is aware that the requester in Reexam 6 has alleged that these references are pertinent to the '051 patent.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: June 9, 2009

By: 
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